

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Kohler/Lee property

DEPARTMENT: County Attorney's Office

DIVISION: Litigation

AUTHORIZED BY: Lola Pfeil

CONTACT: Sharon Sharrer

EXT: 7257

MOTION/RECOMMENDATION:

Approval of a proposed settlement with the property owners, Stephen G. Kohler and Douglas C. Lee, and with tenants Turfmaster Lawn & Ornamental Care, Inc. and Control Pest Management, LLC, relating to Parcel Numbers 112/712 and 113/713 on the County Road 15 road improvement project. Mr. Kohler and Mr. Lee are co-owners of Turfmaster Lawn & Ornamental Care, Inc., which is a commercial landscaping spray business on the site and which claimed business damages. The proposed settlement is at \$489,812.20 for full settlement, jointly and severally, of all claims for compensation from Seminole County including the value of the land and improvements taken, severance damages, business damages and other damages, statutory interest, attorney fees, and cost reimbursements. Judge Galluzzo.

District 5 Brenda Carey

Robert A. McMillan

BACKGROUND:

see attached

STAFF RECOMMENDATION:

Staff recommends that the Board approve the proposed settlement with the property owners, Stephen G. Kohler and Douglas C. Lee, and with tenants Turfmaster Lawn & Ornamental Care, Inc. and Control Pest Management, LLC, relating to Parcel Numbers 112/712 and 113/713 on the County Road 15 road improvement project.

ATTACHMENTS:

1. Kohler/Lee property

Additionally Reviewed By: No additional reviews



COUNTY ATTORNEY'S OFFICE
MEMORANDUM

To: Board of County Commissioners

Through: Matthew G. Minter, Deputy County Attorney *Matthew G. Minter*

From: David G. Shields, Assistant County Attorney *David G. Shields*
Ext. 5736

Concur: Antoine Khoury, P.E., Assistant County Engineer/Engineering Division *AIK*

Date: March 31, 2009 *3-31-09*

Subject: Settlement Authorization
County Road 15
Parcel Nos. 112/712 and 113/703
Property owners: Stephen G. Kohler and Douglas C. Lee
Business Tenants: Turfmaster Lawn & Ornamental Care, Inc. and
Control Pest Management, LLC
Seminole County v. Seminole Co. State Road 46, Ltd., et al
Case No. 2007-CA-1605-101C-13-L

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) as to Parcel Nos. 112/712 and 113/713, including the business damage claim of Turfmaster Lawn & Ornamental Care, Inc. ("Turfmaster"), on the County Road 15 Project ("C15") at \$489,812.20 inclusive of land value, improvements taken, severance damages, business damages, statutory interest, attorney's fees, experts' fees, and cost reimbursements. The compensation under the settlement is allocated as follows:

\$ 93,000.00	Land, improvements, statutory interest and severance damages for Parcel Nos. 112/712
\$207,000.00	Land, improvements, statutory interest, severance damages and business damages for Parcel Nos. 113/713
\$ 64,548.00	Statutory attorney fee
\$ 31,000.00	Land planner
\$ 34,236.50	Engineer
\$ 26,942.70	Business damage expert
\$ 1,020.00	Environmental expert
\$ 32,000.00	Appraiser
\$ 65.00	Court Reporter expense
Total: <u>\$489,812.20</u>	

I PROPERTY

A. Location Data for Parcel Nos. 112/712 and 113/713

The subject parcels are located along the west side of County Road 15 north of unpaved Narcissus Avenue in a portion of unincorporated Seminole County. A location map is attached as Exhibit A and a parcel sketch as Exhibit B.

B. Street Addresses

The street address for Parcel Nos. 112/712 is 348 Monroe Road, Sanford, FL and the address for Parcel Nos. 113/713 is 370 Monroe Road, Sanford, FL.

C. Description

Parcel Nos. 112/712. The parent tract consists of 50,094 square feet and is improved with a house that has been converted to an office.

Parcel Nos. 113/713. The parent tract consists of 34,987 square feet and is improved with several small buildings and an unpaved parking area.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2006-R-114 on May 9, 2006, authorizing the acquisition of Parcel Nos. 113/713 and adopted Resolution No. 2007-71 on April 10, 2007 authorizing the acquisition of Parcel Nos. 112/712. Both resolutions find that the County Road 15 road improvement project is necessary, serves a public purpose and is in the best interests of the citizens of Seminole County. The Order of Take occurred on August 13, 2007, with title to Parcel Nos. 112 and 113 and the right to use Parcel Nos. 712 and 713 vesting in Seminole County on August 21, 2007, the date of the good faith deposit.

III ACQUISITION/REMAINDER

As to Parcel Nos. 112/712, the fee taking was 6,526 square feet and is a rectangular strip of land taken from the subject's frontage on C15. The acquisition left a remainder of 43,568 square feet. The temporary construction easement ("TCE") is 78 square feet and is located along the east boundary of the subject boundary and is for the construction of drainage inlet S-123. The parent tract for Parcel Nos. 112/712 is improved with a house that has been converted to an office.

As to Parcel Nos. 113/713, the fee taking is 5,367 square feet and is a rectangular strip of land that will be taken from the subject's frontage on C15. The acquisition left a remainder of 29,620 square feet. The TCE is 137 square feet and is located along the east boundary of the subject parcel and is for blending the new right-of-way with the access driveway on the remainder property. The parent tract for Parcel

Nos. 113/713 includes a parking area for commercial trucks, a couple of small Quonset hut-like structures and some other small structures.

IV APPRAISED VALUES

A. County Reports

The County's initial appraised value of Parcel Nos. 112/712 was \$47,500.00 (\$47,200.00 for the fee and \$300.00 for the TCE) and for 113/713 was \$39,600.00 (\$39,200.00 for the fee and \$400.00 for the TCE). The County's appraisal was prepared by Florida Realty Analysts, Inc., and was approved by the County's MAI designated staff appraiser. The appraisal was updated for the order of taking hearing. The value did not change as to Parcel Nos. 112/712, but it did change as to Parcel No. 113, to \$40,600.00 resulting in a total value for Parcel Nos. 113/713 to be \$41,000.00. The appraisal reports only appraise the land, improvements, and possible severance damages. The appraisal reports do not encompass business damages.

B. Owners' Reports

The owners' reports were prepared by Bradley J. Pierson with Pierson Appraisal Group with the value of the parcels as of August 27, 2007. The appraisal report for Parcel Nos. 112/712 opined the value for Parcel No. 112 at \$89,505.00 and \$375.00 for Parcel No. 712. Mr. Pierson valued Parcel No. 113 at \$267,895.00 and Parcel No. 713 at \$600.00.

C. Comparison of the County and Owners' Reports

The difference between the appraisals as to Parcel Nos. 112/712 was primarily due to differences in land and improvement values and the comparable sales that the appraiser used, with the owners' appraisal including some additional severance damages. The difference as to Parcel Nos. 113/713 was also due in part to different land and improvement values but the owners' appraiser additionally included high severance damages, i.e., \$215,000.00, essentially claiming the entire usefulness of the remainder would be eliminated.

V BUSINESS DAMAGES

At the time of the taking, Turfmaster's business had been in operation since February 1994. The facility has operated continuously and uninterrupted in excess of five (5) years at the subject property. Therefore, the business meets the statutory time requirements for business damages. Control Pest Management LLC did not file a business damage report or make a claim.

A. Owners' Business Damage Report

The owners retained Lloyd Morgenstern, a certified public accountant with Morgenstern, Phifer & Messina, P.A., as its expert on the business damage claim. The expert's written report opined \$598,061.00 in business damages.

B. County's Business Damage Report

The County retained Gary R. Gerson, a certified public accountant with Gerson, Preston, Robinson & Company, as its expert on the business damage claim. The expert's written report opined \$13,400.00 in business damages.

C. Comparison of the County's and the Owners' Business Damage Reports

The owners claimed the Turfmaster business operated exclusively on the parent tract of Parcel Nos. 113/713 in the prior condition. The County disputed this contention and took the position that the business was operated out of the combined properties. The owners went on to conclude that the taking prevented the business from being able to continue to operate on the remainder of Parcel Nos. 113/713 and thus the owners claimed a wipeout of the business in their business damage report. There is currently a split of authority whether the County could present evidence of a cure of business damages by relocating the business to another site, in this case, to the remainder of Parcel Nos. 112/712. This issue is currently pending before the Florida Supreme Court in another case. The County's expert concluded the taking would only result in a minor short-term disruption of the business.

VI LAND USE ISSUES

The subject property is located in the A-1 zoning district with a future land use of HIP-TI. Turfmaster's lawn chemical spray business is not an approved use for these categories. The owners claimed the County misinformed them about permitted uses of the property when they started their business and that similar businesses have been permitted in the same zoning district. The County contended there was no evidence anyone ever misinformed the owners and other violations either did not exist or had not yet been detected. The County also took the position that the non-conforming use should preclude business damages, but these facts appeared to present a case of first impression and it is not clear which direction the Court would have taken. Under the settlement, the owners must bring the property into full compliance with the Land Development Code, either by moving the business off the property or by obtaining an approved site plan and any appropriate land use changes. The Planning and Development Department is aware of this matter and is prepared to process the owners' application accordingly. Nothing in the settlement predetermines the outcome of the land development review process in any way.

VII BINDING OFFER/STATUS OF THE CASE

The County's initial offer was \$54,400.00 for Parcel Nos. 112/712 (\$54,000.00 for Parcel No. 112 and \$400.00 for Parcel No. 712). The County's initial offer for Parcel Nos. 113/713 was \$50,000.00 (\$49,500.00 for Parcel No. 113 and \$500.00 for Parcel No. 713). The owners' initial demand was \$956,436.00 for all parcels, exclusive of fees and costs. The parties remained far apart until the eve of trial when the owners apparently realized they would need to address the land use issues discussed above and they would need to back down significantly on their monetary demands. When negotiations resumed, the County countered at \$241,427.00, the owners countered with \$360,925.00 and the parties settled on \$300,000.00 for all parcels exclusive only of fees and costs, allocating \$93,000.00 to Parcel Nos. 112/712 and \$207,000.00 to Parcel Nos. 113/713 where the owners claimed all of their business damages and most of their severance damages.

VIII ATTORNEY FEES

A. Attorney's Fees. The statutory attorney's fee reimbursement totals \$64,548.00. The sum is statutorily computed based upon a settlement sum of \$300,000.00 less a first written offer of \$104,400.00 to produce a benefit of \$195,600.00.

B. Expert's Fees/Costs. The owners' expert cost claim at \$145,650.25 was allocated:

(1)	Appraiser	\$ 37,275.00
(2)	Engineering	\$ 34,236.50
(3)	Land Planner	\$ 44,761.05
(4)	CPA	\$ 28,292.70
(5)	Environmental Expert	\$ 1,020.00
(6)	Court Reporter Expense	\$ 65.00

TOTAL: **\$145,650.25**

In negotiation, the County was able to reduce the expert claims to \$125,264.20. The negotiated cost settlement is allocated as follows:

(1)	Appraisal	\$ 32,000.00
(2)	Engineering	\$ 34,236.50
(3)	Land Planner	\$ 31,000.00
(4)	CPA	\$ 26,942.70
(5)	Environmental Expert	\$ 1,020.00
(6)	Court Reporter Expense	\$ 65.00

TOTAL: **\$125,264.20**

The negotiated cost reimbursement represents a reduction of 14.0% from the total requested costs.

IX RATIONALE AND COST CONTROL

To recap, the reports opined compensation to the owners as follows:

County:

Updated Appraisal	\$ 88,500.00
Business damages	<u>\$ 13,400.00</u>
Total	<u>\$101,900.00</u>

Owners:

Appraisal	\$358,375.00
Business damages	<u>\$598,061.00</u>
Total	<u>\$956,436.00</u>

There were several somewhat novel legal and factual issues involved with this case which could have swung it either strongly in favor of the County or strongly in favor of the owners. The first issue was whether the business should be treated as operating on the entire property as the County contended or only on the parent tract of Parcel Nos. 113/713 as the owners contended. The second issue was whether the owners could claim a wipeout of the entire Turfmaster business by proving it operated only on the parent tract of Parcel Nos. 113/713 in the prior condition. The third issue was whether the remainder of Parcel Nos. 113/713 was completely damaged out or whether it remained useful by combining it with the remainder of Parcel Nos. 112/712. Finally, Turfmaster's noncompliance with the Land Development Code might have precluded recovery of any business damages or the owners might have prevailed based on alleged selective enforcement and allegedly being misled initially about how they could use their property. Even the complete defeat of the business damage claim would still leave the owners' total appraisal value of \$358,375.00 to address. As discussed above, the owners are required under the settlement to bring the remainder property into full compliance with the Land Development Code either by moving the business to another location or commencing the process to obtain an approved site plan and any necessary land use changes within ninety (90) days of the final judgment.

There was a dramatic difference between the value opinions of the County's experts and the property owners' experts. This case would be expensive to litigate further, it involves significant litigative risks and the non-prevailing party likely would continue it into the appellate courts. The midpoint between the County's and owners' positions as set forth above is \$529,168.00. A settlement at \$300,000.00 compensation to the owners/tenant is significantly below midpoint and seems a reasonable compromise of a \$956,436.00 claim. Moreover, if litigation were to ensue, the owners

and the County's additional expert costs will likely be several tens of thousands of dollars higher.

X RECOMMENDATION

County staff recommends that the BCC authorize the mediated settlement of \$489,812.20 to settle all claims for compensation from Seminole County including the value of the land and improvements taken, severance damages, business damages, any other damages, statutory interest, business damages, statutory attorney's fees and cost reimbursements.

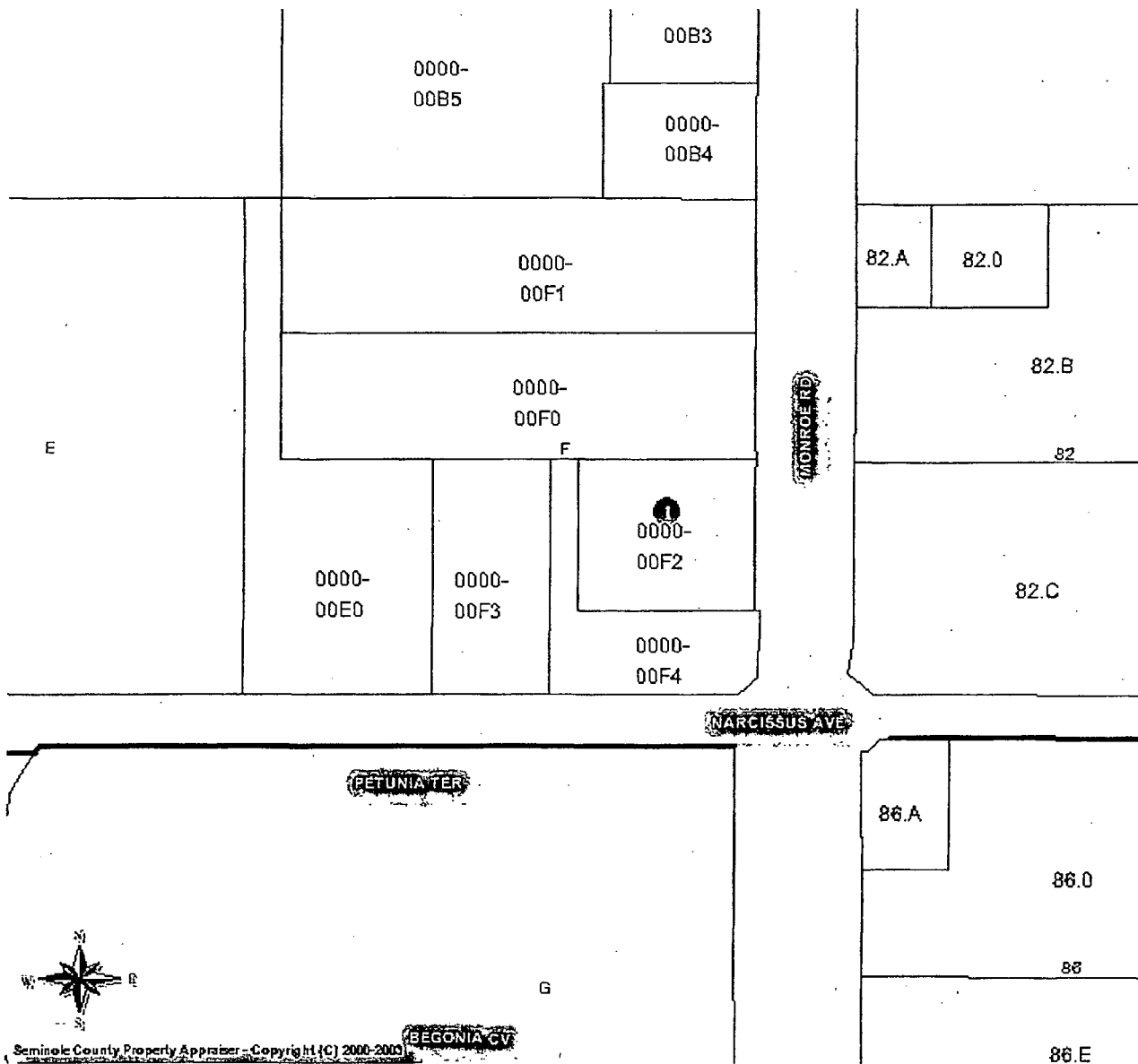
DGS/dre

Attachments

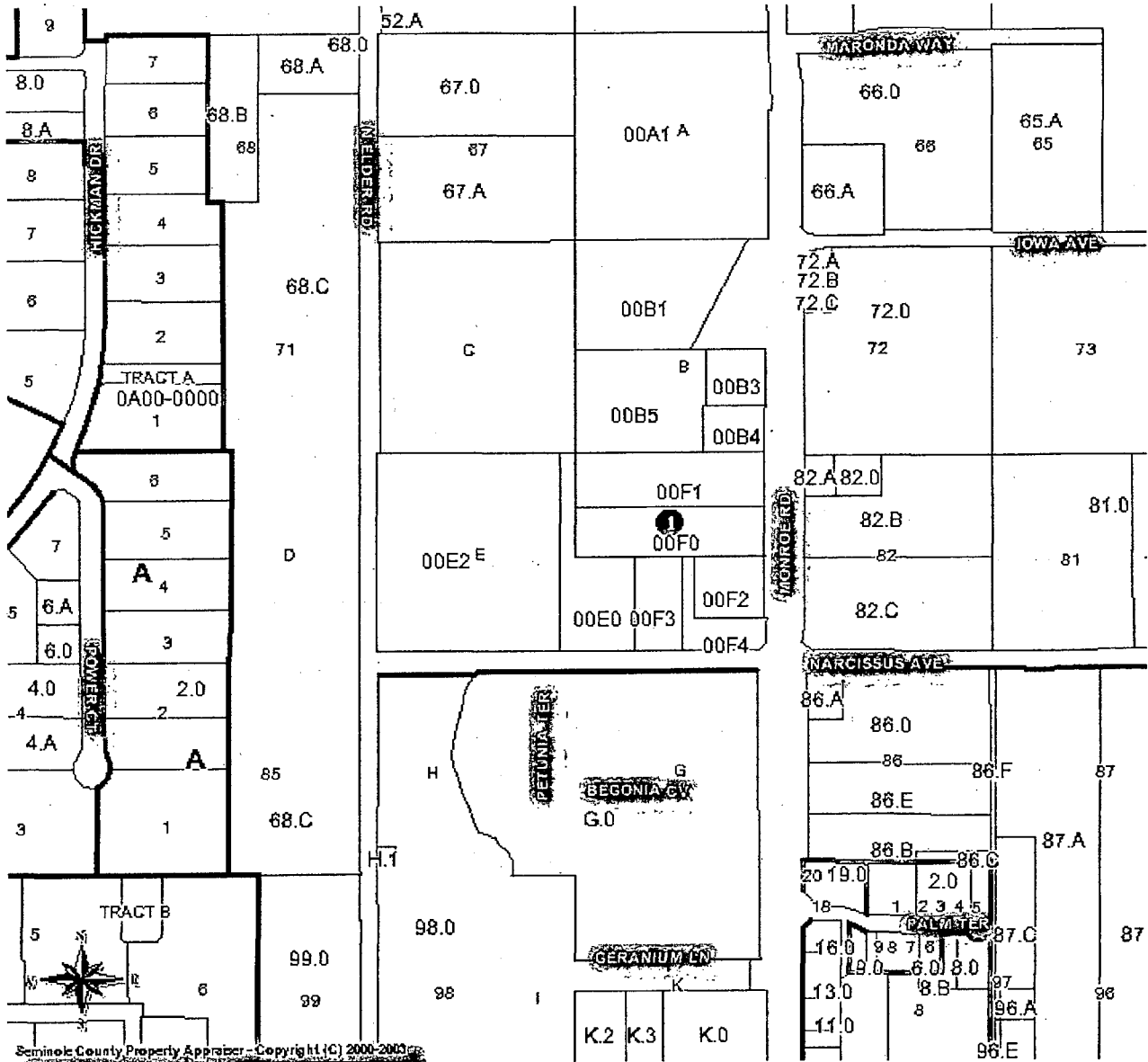
Exhibit A – Location map

Exhibit B – Parcel Sketch

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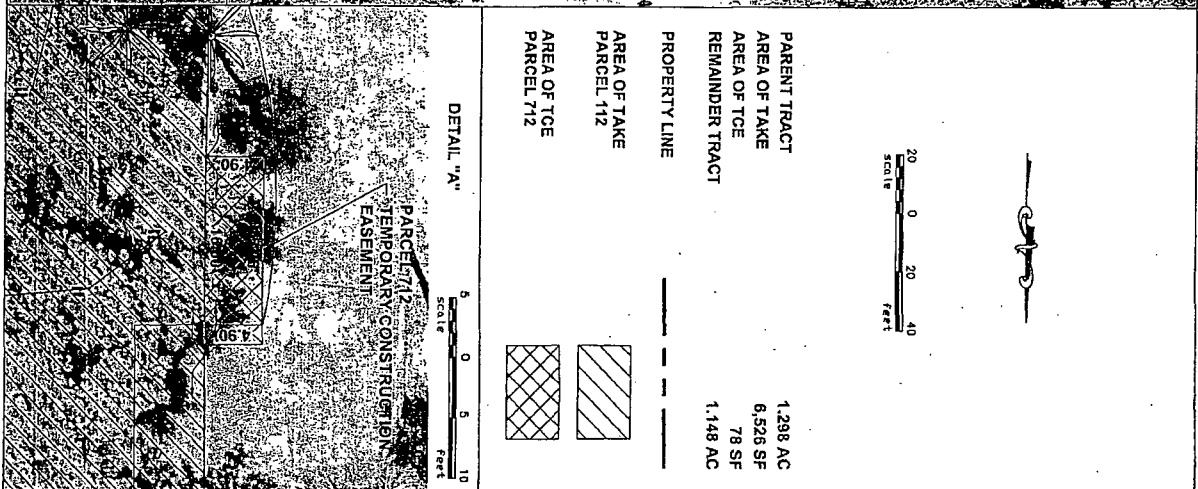
COMPOSITE EXHIBIT A



COMPOSITE EXHIBIT A



COMPOSITE
EXHIBIT B



PARENT TRACT : WITH TAKING SHOWN

PARCEL 112/712
C.R. 15 / MONROE ROAD
SEMINOLE CO., FLORIDA



gai consultants
618 East South Street
Ocala, Florida 32001
352-432-5000

SHEET 2
PROJECT NUMBER
A0000000
FILE NAME: PAR112-712.dwg

BLDG. EOP RETRACT	PHP	8/24/06
REMOVE MAINTEN	PHP	8/24/06
SCALE AS SHOWN		
DRAWN	PHP	APPROVED: JMC
CHECKED	JMC	APP. DATE: 8/24/06

